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IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2648 of 1998

with

SPECIAL CIVIL APPLICATION No 2585 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE S.D.PANDIT

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1. Whether Reporters of Local Papers may be allowed
to see the judgements? No
2. To be referred to the Reporter or not? No.

3. Whether Their Lordships wish to see the fair copy
of the judgement? No.
4. Whether this case involves a substantial question
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder? No
5. Whether it is to be circulated to the Civil Judge?
No

JAYANTIBHAI PARMABHAI CHAUHAN

Versus

G S R T CORPORATION

Appearance:

1. Special Civil Application No. 2648 of 1998

MR HK RATHOD for Petitioner

MR YS LAKHANI for Respondent No. 1, 2

2. Special Civil Application No 2585 of 1998

MR YS LAKHANI for Petitioner

Mr.H.K.Rathod for the respondent.

CORAM : MR.JUSTICE S.D.PANDIT

Date of decision: 23/06/98

ORAL JUDGEMENT

Rule. Mr. Lakhani waives service of Rule on behalf of respondent in SCA No.2648 of 1998 and Mr.H.R.Rathod waives service of notice of Rule on behalf of respondent in SCA No.2585 of 1998.

1. These two petitioners are filed to challenge the order passed by the Labour Court, Surendranagar in Ref.52 of 1992 on 11.7.97. SCA No. 2585 of 1998 is filed by the Divisional Controller, GSRTC, Rajkot Division; whereas SCA No.2648 of 1998 is filed by the workman-Jayantibhai Parambhai Chauhan. As these two petitions are against one and the same award, they are heard together and being disposed of by this common order.

2. The workman Jayantibhai Parambhai Chauhan was working as helper and he had remained absent from his duties without giving prior intimation to his superiors between 2.6.89 and 5.6.89 as well as between 7.6.89 and 16.6.89. He was charge sheeted for the said absence from duty and a departmental inquiry was held against him and by an order dated 18.10.89, he was dismissed from service on finding that the charge against him was proved.

3. Being aggrieved by the said decision the workman raised an industrial dispute and on account of his raising the said industrial dispute, a reference was made to the Labour Court, Surendranagar bearing Ref. No. 52 of 1992. The Labour Court had considered only the question of quantum of punishment as there was no dispute about the misconduct alleged against the workman . It

was contended by the workman before the Labour Court that the punishment was severe and in view of the nature of the misconduct, the punishment of dismissal from service was on the higher side. The employer had contended before the Labour Court that in view of the previous conduct of the workman the punishment awarded to him was quite proper and there was no need to interfere with the punishment awarded to the workman. After considering the material before the Labour Court, the Labour Court found that the punishment of dismissal from service awarded to the workman was not justified and the same was very harsh. The Labour Court therefore, altered the punishment by awarding reinstatement of the workman with only 25 percent of the back wages and stoppage of two increments permanently.

4. Being aggrieved by the said decision the employer has come before this Court. The workman has come before the court to implement the award as regards reinstatement and modification of punishment.

5. Learned advocate for the employer vehemently urged before me that the workman in question was a habitual offender. The GSRTC is a public body and on account of his habitual absence, the GSRTC had to suffer a lot. He also urged before me that the habitual absence of the workman should not be considered lightly and the Labour Court was not at all justified in interfering with the quantum of punishment awarded by the employer. As against this, Mr. Rathod learned advocate for the workman urged before me that the workman will be denied 75 percent of his pay for nearly 9 years and in view of the nature of the misconduct the punishment awarded by the department is very harsh and therefore, the punishment awarded by the department was properly interfered with by the Labour Court. But the Labour Court was not justified in denying 75 percent of back wages as well as permanently stopping two increments of the workman.

6. The employer has produced the service history sheet of the workman and it shows that on six occasions between the year 1976 and 1989 the workman in question had remained absent. The service history sheet also further shows that for all his absence, the workman has already been punished. The workman in question is working as a helper and his job has no direct nexus with the public. Therefore, it could not be said that because of his absence, any inconvenience is caused to the

public. The workman had produced medical certificate regarding his absence in question which is the subject matter of the charge and thus he had shown reasonable cause for his absence. If said circumstances is taken into consideration, then it could not be said that for the commission of the misconduct which is the subject matter of the charge, punishment of dismissal from service is a proper punishment. In my opinion, taking into consideration the nature of the job and the misconduct alleged against the workman, the punishment of dismissal from service was quite harsh. I therefore, hold that the Labour Court has rightly interfered with the punishment of dismissal from service awarded by the employer.

7. The Labour Court has awarded punishment of denial of 75 percent of wages as well as stoppage of two increments with permanent effect. If the nature of charge against the present petitioner-workman is taken into consideration, then it could not be said as has been contended by the employer that said punishment is a lenient one. No doubt by the said order or punishment the workman will be losing 75 percent of pay and he will be also losing two increments permanently. In view of the history of working of workman, the punishment awarded by the Labour Court could not be said to be either lenient or harsh.

8. The workman has principally filed this petition No. 2648 of 1998 for implementation of the said award. However, in view of the dismissal of the petition being SCA No. 2585 of 1998 filed by the employer today, the respondent employer is directed to implement the award by the Labour Court within four weeks from today. The respondent employer is directed to pay arrears of back wages as awarded by the Labour Court within 8 weeks from today.

Rule made absolute in SCA No. 2648 of 1998 and Rule discharged in SCA No. 2585 of 1998. No order as to costs in both the SCAs.

(S.D.Pandit.J)